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Atorneys for Plaintiff
James R. Glidewell Dental Ceramics, Inc.
d/b/a Glidewell Laboratories

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

JAMES R. GLIDEWELL DENTAL
CERAMICS, INC. dba GLIDEWELL
LABORATORIES, a California
corporation.

Plaintiff,

VS.

KEATING DENTAL ARTS, INC., a
California corporation

Defendant.

AND RELATED COUNTERCLAIMS.

| Case No. SACV11-01309-DOC(ANx)

**JAMES R. GLIDEWELL DENTAL
CERAMICS, INC.'S STATEMENT
OF OBJECTIONS TO EVIDENCE
SUBMITTED IN SUPPORT OF
KEATING'S OPPOSITIONS TO
GLIDEWELL'S MOTIONS FOR
SUMMARY JUDGMENT**

Hearing

Date: December 17, 2012
Time: 8:30 a.m.
Ctrm: 9D, Hon. David O. Carter

Pre-Trial Conf.: January 28, 2013
Jury Trial: February 26, 2013

1 Plaintiff and counter-defendant James R. Glidewell Dental Ceramics, Inc.,
 2 doing business as Glidewell Laboratories (“Glidewell”) hereby objects to the
 3 following evidence presented by defendant and counter-claimant Keating Dental
 4 Arts, Inc. (“Keating”) in support of its oppositions to Glidewell’s motions for
 5 summary judgment set for hearing on December 17, 2012 before this Court:

6 **I. LEGAL DISCUSSION**

7 To avoid repetition, we incorporate the discussion of the admissibility of
 8 website printouts and Keating’s genericness evidence from Glidewell’s Statement
 9 of Objections to Evidence Submitted in Support of Keating’s Motions for Summary
 10 Judgment [Dkt. 115] (“Objections [Dkt. 115]”) herein by reference.

11 **II. OBJECTIONS**

12 **A. Declaration of David Jankowski iso Keating’s Motions for Summary
 13 Judgment**

Exhibit	Objection
4	<p>This exhibit is a full deposition transcript, most of which Keating does not cite in its papers. Glidewell has not reviewed the entire transcript to determine what is admissible and what is not, nor is it obligated to. Instead, Glidewell hereby reserves its right to raise objections to any uncited portions of the transcript Keating may later rely on.</p> <p>FRE 901. The deposition transcript is not properly authenticated. No signature page is attached and the copy of the transcript is not a certified copy.</p>
5	<p>This exhibit is a full deposition transcript, most of which Keating does not cite in its papers. Glidewell has not reviewed the entire transcript to determine what is admissible and what is not, nor is it obligated to. Instead, Glidewell hereby reserves its right to raise objections to any uncited portions of the transcript Keating may later rely on.</p> <p>FRE 901. The deposition transcript is not properly authenticated. No</p>

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28
Exhibit	Objection
	signature page is attached and the copy of the transcript is not a certified copy.
6	This exhibit is a full deposition transcript, most of which Keating does not cite in its papers. Glidewell has not reviewed the entire transcript to determine what is admissible and what is not, nor is it obligated to. Instead, Glidewell hereby reserves its right to raise objections to any uncited portions of the transcript Keating may later rely on. FRE 901. The deposition transcript is not properly authenticated. No signature page is attached and the copy of the transcript is not a certified copy.
7	FRE 401, 402, 403. With respect to Keating's Response to SUF 14 (Dkt. 126), Keating proffers this exhibit as evidence contrary to the fact that "The usages of the ® symbol in Exhibits 70-72 were inadvertent...." because there were additional examples. This evidence is not probative that the instances in Exhibits 70-72 were not inadvertent. With respect to Keating's Response to SUF 19 (Dkt. 126), this exhibit a collection of emails, and is not probative of greater misuse of ® beyond a handful of inadvertent uses. With respect to SGI 2-4 (Dkt. 126), this exhibit is a collection of emails; this evidence does not establish that Glidewell "widely used" the ® symbol in its email blasts to customers.
15	FRE 901. This exhibit has not been authenticated by any declaration, nor has Keating cited any deposition testimony to authenticate it.
16	FRE 901. This exhibit has not been authenticated by any declaration, nor has Keating cited any deposition testimony to authenticate it.
17	FRE 901. This exhibit has not been authenticated by any declaration, nor has Keating cited any deposition testimony to authenticate it.

1 Exhibit	Objection
2 27	3 3 FRE 401, 402, 403. This document has no tendency to indicate the pronunciation of the term “Brux.”
4 28	5 5 FRE 401, 402, 403. This document has no tendency to indicate the pronunciation of the term “Z-Brux.”
6 31	7 7 FRE 401, 402, 403. This document has no tendency to indicate the pronunciation marks that sound similar to BruxZir, as the mark used in the exhibit is Glidewell’s BruxZir mark.
9 37	10 10 FRE 401, 402, 403, 802, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (See section I(B), Objections [Dkt. 115]). 13 13 This exhibit is hearsay because it is an out of court statement offered for the truth of the matter asserted. (See section I(A), Objections [Dkt. 115]). 15 15 This exhibit lacks authenticity because Jankowski does not testify that he has personal knowledge of the contents of the alleged website. (See section I(A), Objections [Dkt. 115]).
18 38	19 19 FRE 401, 402, 403, 802, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (See section I(B), Objections [Dkt. 115]). 22 22 This exhibit is hearsay because it is an out of court statement offered for the truth of the matter asserted. (See section I(A), Objections [Dkt. 115]). 24 24 This exhibit lacks authenticity because Jankowski does not testify that he has personal knowledge of the contents of the alleged website. (See section I(A), Objections [Dkt. 115]).
27 39	28 FRE 401, 402, 403, 802, 901. This document has no tendency to show

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Exhibit	Objection
	<p>how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (See section I(B), Objections [Dkt. 115]).</p> <p>This exhibit is hearsay because it is an out of court statement offered for the truth of the matter asserted. (See section I(A), Objections [Dkt. 115]). This exhibit lacks authenticity because Jankowski does not testify that he has personal knowledge of the contents of the alleged website. (See section I(A), Objections [Dkt. 115]).</p>
42	<p>FRE 401, 402, 403, 802, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (See section I(B), Objections [Dkt. 115]).</p> <p>This exhibit is hearsay because it is an out of court statement offered for the truth of the matter asserted. (See section I(A), Objections [Dkt. 115]). This exhibit lacks authenticity because Jankowski does not testify that he has personal knowledge of the contents of the alleged forms. (See section I(A), Objections [Dkt. 115]).</p>
43	<p>FRE 401, 402, 403, 802, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (See section I(B), Objections [Dkt. 115]). Further objection on the basis that the term “Zirconia crown” is not used as a mark, and this website does not indicate the pronunciation of the term “zirconia crown.”</p> <p>This exhibit is hearsay because it is an out of court statement offered for the truth of the matter asserted. (See section I(A), Objections [Dkt. 115]). This exhibit lacks authenticity because Jankowski does not testify that he</p>

Exhibit	Objection
	has personal knowledge of the contents of the alleged forms. (See section I(A), Objections [Dkt. 115]).
46	FRE 801, 802, 901. This exhibit is hearsay as it is an out of court statement by Keating offered for the truth of the matter asserted. This exhibit has not been authenticated by any declaration, nor has Keating cited any deposition testimony to authenticate it.
47	FRE 801, 802, 901. This exhibit is hearsay as it is an out of court statement by Keating offered for the truth of the matter asserted. This exhibit has not been authenticated by any declaration, nor has Keating cited any deposition testimony to authenticate it.
49	FRE 801, 802, 901. This exhibit is hearsay as it is an out of court statement by Keating offered for the truth of the matter asserted. This exhibit has not been authenticated by any declaration, nor has Keating cited any deposition testimony to authenticate it.

B. Declaration of Dr. David W. Eggleston

Exhibit	Objection
66	FRE 801, 802. The attached expert report is not signed under penalty of perjury. Accordingly, it is inadmissible hearsay. <i>Harris v. Extendicare Homes, Inc.</i> , 829 F. Supp. 2d 1023, 1027 (W.D. Wash. 2011) (“[C]ourts in this circuit have routinely held that . . . unsworn expert reports are not admissible to support or oppose summary judgment.”); <i>King Tuna, Inc. v. Anova Food, Inc.</i> , 2009 WL 650732 (C.D. Cal. 2009) (“It is well-settled that under Fed.R.Civ.P. 56(e), unsworn expert reports are not admissible to support or oppose summary judgment.”).
67	FRE 801, 802. The attached expert report is not signed under penalty of

1 Exhibit	2 Objection
	3 perjury. Accordingly, it is inadmissible hearsay. <i>Harris v. Extendicare</i> 4 <i>Homes, Inc.</i> , 829 F. Supp. 2d 1023, 1027 (W.D. Wash. 2011) (“[C]ourts 5 in this circuit have routinely held that . . . unsworn expert reports are not 6 admissible to support or oppose summary judgment.”); <i>King Tuna, Inc. v.</i> 7 <i>Anova Food, Inc.</i> , 2009 WL 650732 (C.D. Cal. 2009) (“It is well-settled 8 that under Fed.R.Civ.P. 56(e), unsworn expert reports are not admissible 9 to support or oppose summary judgment.”).
10 79	11 FRE 901. Dr. Eggleston does not testify that he has personal knowledge 12 of the contents of Glidewell’s advertisements. (See section I(A) 13 (foundation), Objections [Dkt. 115]).
14 80	15 FRE 901. Dr. Eggleston does not testify that he has personal knowledge 16 of the contents of Glidewell’s website. (See section I(A) (foundation), 17 18 Objections [Dkt. 115]).
19 81	20 FRE 901. Dr. Eggleston does not testify that he has personal knowledge 21 of the contents of Glidewell’s website. (See section I(A) (foundation), 22 23 Objections [Dkt. 115]).
24 82	25 FRE 901. Dr. Eggleston does not testify that he has personal knowledge 26 of the contents of Glidewell’s website. (See section I(A) (foundation), 27 28 Objections [Dkt. 115]).
83	FRE 901. Dr. Eggleston does not testify that he has personal knowledge of the contents of Glidewell’s website. (See section I(A) (foundation), Objections [Dkt. 115]).
84	FRE 901. Dr. Eggleston does not testify that he has personal knowledge of the contents of Glidewell’s website. (See section I(A) (foundation), Objections [Dkt. 115]).
93	FRE 401, 402, 403, 802, 901. This document has no tendency to show

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28
Exhibit	Objection
	<p>how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).</p> <p>Further objection on the basis that this website has no tendency to show how the term is pronounced, as it does not indicate the pronunciation of the term “Full-Z.”</p> <p>This exhibit is hearsay because it is an out of court statement offered for the truth of the matter asserted. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).</p>
94	<p>FRE 401, 402, 403, 802, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).</p> <p>This exhibit is hearsay because it is an out of court statement offered for the truth of the matter asserted. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).</p>
96	<p>FRE 401, 402, 403, 802, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).</p>

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Exhibit	Objection
	<p>Further objection on the basis that this website has no tendency to show how the term is pronounced, as it does not indicate the pronunciation of the term “Zir-cast.”</p> <p>This exhibit is hearsay because it is an out of court statement offered for the truth of the matter asserted. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).</p>
99	<p>FRE 401, 402, 403, 802, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).</p> <p>Further objection on the basis that this website has no tendency to show how the term is pronounced, as it does not indicate the pronunciation of the term “Zir-Max.”</p> <p>This exhibit is hearsay because it is an out of court statement offered for the truth of the matter asserted. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).</p>
100	<p>FRE 401, 402, 403, 802, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).</p>

Exhibit	Objection
	This exhibit is hearsay because it is an out of court statement offered for the truth of the matter asserted. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).
101	This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).
102	FRE 401, 402, 403, 802, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).
	Further objection on the basis that this website has no tendency to show how the term is pronounced, as it does not indicate the pronunciation of the term “Diazir.”
	This exhibit is hearsay because it is an out of court statement offered for the truth of the matter asserted. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).
	This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).
	FRE 401, 402, 403, 802, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).
	This exhibit is hearsay because it is an out of court statement offered for the truth of the matter asserted. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).

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	This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).
103	<p>FRE 401, 402, 403, 802, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).</p> <p>Further objection on the basis that this website has no tendency to show how the term is pronounced, as it does not indicate the pronunciation of the term “ZirFit.”</p> <p>This exhibit is hearsay because it is an out of court statement offered for the truth of the matter asserted. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).</p>
104	<p>FRE 401, 402, 403, 802, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).</p> <p>This exhibit is hearsay because it is an out of court statement offered for the truth of the matter asserted. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).</p>

1 Exhibit	2 Objection
3 105	4 FRE 401, 402, 403, 802, 901. This document has no tendency to show 5 how the terms “Bruxer” or “Bruxzir” were used by the public as of April 6 2011, the critical date for determining genericness. (See section I(B) 7 (relevance), Objections [Dkt. 115]).
8 106	9 This exhibit is hearsay because it is an out of court statement offered for 10 the truth of the matter asserted. (See section I(A) (foundation), 11 Objections [Dkt. 115]).
12 108	13 This exhibit lacks authenticity, because Dr. Eggleston does not testify that 14 he has personal knowledge of the contents of the mentioned website. (See 15 section I(A) (foundation), Objections [Dkt. 115]).

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28
Exhibit	Objection
	section I(A) (foundation), Objections [Dkt. 115]).
109	<p>FRE 401, 402, 403, 802, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (See section I(B) (relevance), Objections [Dkt. 115]).</p> <p>Further objection on the basis that this website has no tendency to show how the term is pronounced, as it does not indicate the pronunciation of the term “ZerisBRUX.”</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (See section I(A) (foundation), Objections [Dkt. 115]).</p>
110	<p>FRE 401, 402, 403, 802, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (See section I(B) (relevance), Objections [Dkt. 115]).</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (See section I(A) (foundation), Objections [Dkt. 115]).</p>
111	<p>FRE 401, 402, 403, 802, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (See section I(B) (relevance), Objections [Dkt. 115]).</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (See section I(A) (foundation), Objections [Dkt. 115]).</p>
112	FRE 401, 402, 403, 802, 901. This document has no tendency to show

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	Exhibit Objection
	<p>how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (See section I(B) (relevance), Objections [Dkt. 115]).</p> <p>Further objection on the basis that the term “bruxing” is not used as a mark, and that this website has no tendency to show how the term is pronounced, as it does not indicate the pronunciation of the term “bruxing.”</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (See section I(A) (foundation), Objections [Dkt. 115]).</p>
113	<p>FRE 401, 402, 403, 802, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (See section I(B) (relevance), Objections [Dkt. 115]).</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (See section I(A) (foundation), Objections [Dkt. 115]).</p>
114	<p>FRE 401, 402, 403, 802, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (See section I(B) (relevance), Objections [Dkt. 115]).</p> <p>Further, this website has no tendency to show how the term is pronounced, as it does not indicate the pronunciation of the term “BruxArt.”</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (See</p>

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	Exhibit	Objection
		section I(A) (foundation), Objections [Dkt. 115]).
117		<p>FRE 401, 402, 403, 802, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (See section I(B) (relevance), Objections [Dkt. 115]).</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (See section I(A) (foundation), Objections [Dkt. 115]).</p>
119		<p>FRE 401, 402, 403, 802, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (See section I(B) (relevance), Objections [Dkt. 115]). Further objection on the basis that Keating, in its Response to Glidewell’s SUF 50 in Keating’s Statement of Genuine Disputes of Material Fact in Support of Keating’s Opposition to Glidewell’s Motion for Partial Summary Judgment re Infringement uses this exhibit to show “bruxer” as an example of a mark that sounds similar to BruxZir (“Beyond this, there are more than five marks used in the U.S. that sound similar to BruxZir.”) Keating also cites this exhibit in support of its Response to Glidewell’s SUF 18 in Keating’s Statement of Genuine Disputes of Material Fact in Support of Keating’s Opposition to Glidewell’s Motion for Partial Summary Judgment As to Keating’s Invalidity Defense for the proposition that “Bruxer” is used in the dental industry to refer to crowns. “Bruxer” cannot both, on the one hand, refer to a mark and, on the other, refer to a generic term.</p> <p>Further objection on the basis that this website has no tendency to show how the term is pronounced, as it does not indicate the pronunciation of</p>

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28
Exhibit	Objection
	<p>the term “bruxer.”</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (See section I(A) (foundation), Objections [Dkt. 115]).</p>
120	<p>FRE 401, 402, 403, 802, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (See section I(B) (relevance), Objections [Dkt. 115]).</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (See section I(A) (foundation), Objections [Dkt. 115]).</p>
121	<p>FRE 401, 402, 403, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (See section I(B) (relevance), Objections [Dkt. 115]).</p> <p>Further objection on the basis that the term “bruxing” is not used as a mark in this website, and this website has no tendency to show how the term is pronounced, as it does not indicate the pronunciation of the term “bruxing.”</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (See section I(A) (foundation), Objections [Dkt. 115]).</p>
122	<p>FRE 401, 402, 403, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (See section I(B) (relevance), Objections [Dkt. 115]).</p>

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Exhibit	Objection
	<p>Further objection on the basis this website has no tendency to show how the term is pronounced, as it does not indicate the pronunciation of the term “Brux Checker.”</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (See section I(A) (foundation), Objections [Dkt. 115]).</p>
123	<p>FRE 401, 402, 403, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (See section I(B) (relevance), Objections [Dkt. 115]).</p> <p>Further objection on the basis that this website has no tendency to show how the term is pronounced, as it does not indicate the pronunciation of the term “Dr. Brux.”</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (See section I(A) (foundation), Objections [Dkt. 115]).</p>
124	<p>FRE 401, 402, 403, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (See section I(B) (relevance), Objections [Dkt. 115]).</p> <p>Further objection on the basis this website has no tendency to show how the term is pronounced, as it does not indicate the pronunciation of the term “brux-eze.”</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (See section I(A) (foundation), Objections [Dkt. 115]).</p>

1 Exhibit	2 Objection
3 125	<p>4 FRE 401, 402, 403, 901. This document has no tendency to show how 5 the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, 6 the critical date for determining genericness. (See section I(B) 7 (relevance), Objections [Dkt. 115]).</p> <p>8 Further objection on the basis that the term “BruxCare” is not used as a 9 mark, and this website has no tendency to show how the term is 10 pronounced, as it does not indicate the pronunciation of the term 11 “BruxCare.”</p> <p>12 This exhibit lacks authenticity, because Dr. Eggleston does not testify that 13 he has personal knowledge of the contents of the mentioned website. (See 14 section I(A) (foundation), Objections [Dkt. 115]).</p>
13 126	<p>14 FRE 401, 402, 403, 901. This document has no tendency to show how 15 the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, 16 the critical date for determining genericness. (See section I(B) 17 (relevance), Objections [Dkt. 115]).</p> <p>18 Further objection on this website has no tendency to show how the term is 19 pronounced, as it does not indicate the pronunciation of the term 20 “BRUXGUARD.”</p> <p>21 This exhibit lacks authenticity, because Dr. Eggleston does not testify that 22 he has personal knowledge of the contents of the mentioned website. (See 23 section I(A) (foundation), Objections [Dkt. 115]).</p>
23 127	<p>24 FRE 401, 402, 403, 901. This document has no tendency to show how 25 the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, 26 the critical date for determining genericness. (See section I(B) 27 (relevance), Objections [Dkt. 115]).</p> <p>28 Further objection on the basis that this website has no tendency to show</p>

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28
Exhibit	Objection
	<p>how the term is pronounced, as it does not indicate the pronunciation of the term “Zir-Cut.”</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (See section I(A) (foundation), Objections [Dkt. 115]).</p>
128	<p>FRE 401, 402, 403, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (See section I(B) (relevance), Objections [Dkt. 115]).</p> <p>Further objection on the basis that this website does not establish the term’s use as a mark, and has no tendency to show how the term is pronounced, as it does not indicate the pronunciation of the term “ZirBlock.”</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (See section I(A) (foundation), Objections [Dkt. 115]).</p>
129	<p>FRE 401, 402, 403, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (See section I(B) (relevance), Objections [Dkt. 115]).</p> <p>Further objection on the basis that this website has no tendency to show how the term is pronounced, as it does not indicate the pronunciation of the term “IPS e.max ZirCAD.”</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (See section I(A) (foundation), Objections [Dkt. 115]).</p>

1 Exhibit	Objection
130	<p>FRE 401, 402, 403, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).</p> <p>Further objection on the basis that this website has no tendency to show how the term is pronounced, as it does not indicate the pronunciation of the term “IPS e.max ZirPress.”</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).</p>
131	<p>FRE 401, 402, 403, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).</p> <p>Further objection on the basis that this website has no tendency to show how the term is pronounced, as it does not indicate the pronunciation of the term “IPS e.max Ceram ZirLiner Kit.”</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).</p>
132	<p>FRE 401, 402, 403, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).</p> <p>Further objection on the basis that this website does not indicate that “Zirprime” is used as a mark, and that the website has no tendency to</p>

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28
Exhibit	Objection
	<p>show how the term is pronounced, as it does it indicate the pronunciation of the term “Zirprime.”</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (See section I(A) (foundation), Objections [Dkt. 115]).</p>
133	<p>FRE 401, 402, 403, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (See section I(B) (relevance), Objections [Dkt. 115]).</p> <p>Further objection on the basis that this website has no tendency to show how the term is pronounced, as it does not indicate the pronunciation of the term “ZIR.CARE.”</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (See section I(A) (foundation), Objections [Dkt. 115]).</p>
134	<p>FRE 401, 402, 403, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (See section I(B) (relevance), Objections [Dkt. 115]).</p> <p>Further objection on the basis that this website has no tendency to show how the term is pronounced, as it does not indicate the pronunciation of the term “ZiReal.”</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (See section I(A) (foundation), Objections [Dkt. 115]).</p>
135	FRE 401, 402, 403, 901. This document has no tendency to show how

1 Exhibit	Objection
	<p>the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).</p> <p>Further objection on the basis that this website does not indicate the pronunciation of the term “ZirColor.”</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).</p>
136	<p>FRE 401, 402, 403, 802, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).</p> <p>This exhibit is hearsay because it is an out of court statements offered for the truth of the matter asserted. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).</p> <p>Further objection on the basis that this exhibit was untimely served, as it was served by messenger on November 20, 2012. L.R. 6-1 (evidence in support of moving brief served later than 28 days prior to motion hearing).</p>
137	<p>FRE 401, 402, 403, 802, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).</p>

Exhibit	Objection
	<p>This exhibit is hearsay because it is an out of court statements offered for the truth of the matter asserted. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).</p> <p>Further objection on the basis that this exhibit was untimely served, as it was served by messenger on November 20, 2012. L.R. 6-1 (evidence in support of moving brief served later than 28 days prior to motion hearing).</p>

C. Declaration of Rustin K. Magnum

Exhibit	Objection
50	<p>This exhibit is a full deposition transcript, most of which Keating does not cite in its papers. Glidewell has not reviewed the entire transcript to determine what is admissible and what is not, nor is it obligated to. Instead, Glidewell hereby reserves its right to raise objections to any uncited portions of the transcript Keating may later rely on. Further objection on the basis that this exhibit was untimely served, as it was served by messenger on November 20, 2012. L.R. 6-1 (evidence in support of moving brief served later than 28 days prior to motion hearing).</p>
51	<p>This exhibit is a full deposition transcript, most of which Keating does not cite in its papers. Glidewell has not reviewed the entire transcript to determine what is admissible and what is not, nor is it obligated to. Instead, Glidewell hereby reserves its right to raise objections to any</p>

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28
Exhibit	Objection
	uncited portions of the transcript Keating may later rely on. Further objection on the basis that this exhibit was untimely served, as it was served by messenger on November 20, 2012. L.R. 6-1 (evidence in support of moving brief served later than 28 days prior to motion hearing).
52	This exhibit is a full deposition transcript, most of which Keating does not cite in its papers. Glidewell has not reviewed the entire transcript to determine what is admissible and what is not, nor is it obligated to. Instead, Glidewell hereby reserves its right to raise objections to any uncited portions of the transcript Keating may later rely on. Further objection on the basis that this exhibit was untimely served, as it was served by messenger on November 20, 2012. L.R. 6-1 (evidence in support of moving brief served later than 28 days prior to motion hearing).
53	This exhibit is a full deposition transcript, most of which Keating does not cite in its papers. Glidewell has not reviewed the entire transcript to determine what is admissible and what is not, nor is it obligated to. Instead, Glidewell hereby reserves its right to raise objections to any uncited portions of the transcript Keating may later rely on. Further objection on the basis that this exhibit was untimely served, as it was served by messenger on November 20, 2012. L.R. 6-1 (evidence in support of moving brief served later than 28 days prior to motion hearing).
54	This exhibit is a full deposition transcript, most of which Keating does not cite in its papers. Glidewell has not reviewed the entire transcript to determine what is admissible and what is not, nor is it obligated to.

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28
Exhibit	Objection
	Instead, Glidewell hereby reserves its right to raise objections to any uncited portions of the transcript Keating may later rely on. Further objection on the basis that this exhibit was untimely served, as it was served by messenger on November 20, 2012. L.R. 6-1 (evidence in support of moving brief served later than 28 days prior to motion hearing).
55	FRE 901. This exhibit has not been authenticated by any declaration, nor does the deposition testimony cited by Keating authenticate the exhibit. (See SOF 57, Doc No. 88-1). Further objection on the basis that this exhibit was untimely served, as it was served by messenger on November 20, 2012. L.R. 6-1 (evidence in support of moving brief served later than 28 days prior to motion hearing).
56	FRE 901. This exhibit has not been authenticated by any declaration, nor does the deposition testimony cited by Keating authenticate the exhibit. (See SOF 57, Doc No. 88-1). Further objection on the basis that this exhibit was untimely served, as it was served by messenger on November 20, 2012. L.R. 6-1 (evidence in support of moving brief served later than 28 days prior to motion hearing).
57	FRE 901. This exhibit has not been authenticated by any declaration, nor does the deposition testimony cited by Keating authenticate the exhibit. (See SOF 57, Doc No. 88-1). Further objection on the basis that this exhibit was untimely served, as it was served by messenger on November 20, 2012. L.R. 6-1 (evidence in support of moving brief served later than 28 days prior to motion hearing).
58	FRE 901. This exhibit has not been authenticated by any declaration, nor does the deposition testimony cited by Keating authenticate the exhibit.

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	Exhibit Objection
	(See SOF 57, Doc No. 88-1). Further objection on the basis that this exhibit was untimely served, as it was served by messenger on November 20, 2012. L.R. 6-1 (evidence in support of moving brief served later than 28 days prior to motion hearing).
59	<p>FRE 401, 402, 403, 802, 901. This exhibit is irrelevant and unduly prejudicial. It has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (See section I(B), Objections [Dkt. 115]).</p> <p>This exhibit is hearsay because it is a compilation of out of court statements offered for the truth of the matter asserted. (See section I(A), Objections [Dkt. 115]).</p> <p>This exhibit lacks authenticity because Mangum does not testify that he has personal knowledge of the contents of alleged documents. (See section I(A), Objections [Dkt. 115]).</p> <p>Further objection on the basis that this exhibit was untimely served, as it was served by messenger on November 20, 2012. L.R. 6-1 (evidence in support of moving brief served later than 28 days prior to motion hearing).</p>
60	<p>FRE 401, 402, 403, 802, 901. This exhibit is irrelevant and unduly prejudicial. It has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (See section I(B), Objections [Dkt. 115]).</p> <p>This exhibit is hearsay because it is a compilation of out of court statements offered for the truth of the matter asserted. (See section I(A), Objections [Dkt. 115]).</p> <p>This exhibit lacks authenticity because Mangum does not testify that he</p>

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	Exhibit Objection
	<p>has personal knowledge of the contents of alleged documents. (<i>See</i> section I(A), Objections [Dkt. 115]).</p> <p>Further objection on the basis that this exhibit was untimely served, as it was served by messenger on November 20, 2012. L.R. 6-1 (evidence in support of moving brief served later than 28 days prior to motion hearing).</p>
61	<p>FRE 401, 402, 403, 802, 901. This exhibit is irrelevant and unduly prejudicial. It has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B), Objections [Dkt. 115]).</p> <p>This exhibit is hearsay because it is a compilation of out of court statements offered for the truth of the matter asserted. (<i>See</i> section I(A), Objections [Dkt. 115]).</p> <p>This exhibit lacks authenticity because Mangum does not testify that he has personal knowledge of the contents of alleged documents. (<i>See</i> section I(A), Objections [Dkt. 115]).</p>
62	<p>FRE 401, 402, 403, 802, 901. This exhibit is irrelevant and unduly prejudicial. It has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B), Objections [Dkt. 115]).</p> <p>This exhibit is hearsay because it is a compilation of out of court statements offered for the truth of the matter asserted. (<i>See</i> section I(A), Objections [Dkt. 115]).</p> <p>This exhibit lacks authenticity because Mangum does not testify that he has personal knowledge of the contents of alleged documents. (<i>See</i> section I(A), Objections [Dkt. 115]).</p>

Exhibit	Objection
63	FRE 901. This exhibit has not been authenticated by any declaration, nor does the deposition testimony cited by Keating authenticate the exhibit. (See SOF 57, Doc No. 88-1).
64	FRE 901. This exhibit has not been authenticated by any declaration, nor does the deposition testimony cited by Keating authenticate the exhibit. (See SOF 57, Doc No. 88-1).

D. Declaration of Jeffrey Van Hoosear

Exhibit	Objection
V-1	Objection on the basis that this exhibit was untimely served, as it was served by messenger on November 20, 2012. L.R. 6-1 (evidence in support of moving brief served later than 28 days prior to motion hearing).
V-2	Objection on the basis that this exhibit was untimely served, as it was served by messenger on November 20, 2012. L.R. 6-1 (evidence in support of moving brief served later than 28 days prior to motion hearing).
V-3	Objection on the basis that this exhibit was untimely served, as it was served by messenger on November 20, 2012. L.R. 6-1 (evidence in support of moving brief served later than 28 days prior to motion hearing).
V-4	FRE 401, 402. This document is offered to show that “bruxer” and “BruxZir” are pronounced the same (SOF 48), but in Exhibit V-4 Dr. DiTolla never pronounces the word “bruxer,” and thus the video is irrelevant for purposes of comparison. Further objection on the basis that this exhibit was untimely served, as it was served by messenger on

Exhibit	Objection
	November 20, 2012. L.R. 6-1 (evidence in support of moving brief served later than 28 days prior to motion hearing).
V-5	Objection on the basis that this exhibit was untimely served, as it was served by messenger on November 20, 2012. L.R. 6-1 (evidence in support of moving brief served later than 28 days prior to motion hearing).

E. Declaration of Lori Boatright

Exhibit	Objection
A	FRE 801, 802. The attached expert report is not signed under penalty of perjury. Accordingly, it is inadmissible hearsay. <i>Harris v. Extendicare Homes, Inc.</i> , 829 F. Supp. 2d 1023, 1027 (W.D. Wash. 2011) (“[C]ourts in this circuit have routinely held that . . . unsworn expert reports are not admissible to support or oppose summary judgment.”); <i>King Tuna, Inc. v. Anova Food, Inc.</i> , 2009 WL 650732 (C.D. Cal. 2009) (“It is well-settled that under Fed.R.Civ.P. 56(e), unsworn expert reports are not admissible to support or oppose summary judgment.”).

F. Objections to Declaration of Carol Frattura

Paragraph	Objection
8	FRE 401, 402, 403, 702. The witness’s statements do not have any tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (See section I(B) (relevance), Objections [Dkt. 115]). The witness fails to specify when she regarded “bruxzir,” “bruxer,” or “bruxir” as meaning an “all-zirconia crown,” and at most indicates

	<p>a time reference as of the date of the prescription forms attached to her declaration as Exhibit A, which either post-date April 2011 (KDA-004853-61, KDA 004863, KDA-004868, and KDA-004870), are undated (KDA-004869), or show that dentists use terms other than “bruxzir” or “bruxer” (KDA-004862 (May 2011) (“Brux Zirconia”), KDA-004864 (October 2010) (“Full Ceram Crown”), KDA-004865 (March 2011) (“zinostar”), KDA-004866 (October 2010) (“BRUX zirconia”), KDA-004867 (September 2010) (“zirconia crown”).</p> <p>Further, the witness’s statement of what dentists could have been referring to when using the term “bruxer” is speculative.</p>
18	<p>FRE 401, 402, 403, 702. The witness’s statements do not have any tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness, but refer to the time period following January 2012. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]). The witness is also speculating as what others dentists mean when using the terms “bruxzir crown” and “bruxer crown.”</p>
Exhibit	
Portions of Ex. A: KDA- 004853-61, KDA 004863, KDA- 004868,	<p>FRE 401, 402, 403, 802. The attached documents do not have any tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).</p> <p>The prescription forms in Exhibit A either post-date April 2011 (KDA-004853-61, KDA 004863, KDA-004868, and KDA-004870), or are undated (KDA-004869).</p> <p>The attached documents are also inadmissible hearsay. FRE 801,</p>

KDA- 802; *Orr v. Bank of America*, 285 F.3d 764, 778 (9th Cir. 2002).
004869, and
KDA-
004870.

G. Declaration of Dr. William Belton

Paragraph	Objection
9	<p>FRE 401, 402, 403. The witness's statements do not have any tendency to show how the terms "Bruxer" or "Bruxzir" were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).</p> <p>The witness fails to specify when he regarded "BruxZir" as meaning an "all zirconia crown, commonly used for bruxers," and at most indicates a time reference as of the date of the prescription forms attached to his declaration as Exhibit A, dated November 2011, March 2012, and May 2012.</p>
10	<p>FRE 401, 402, 403. The witness's statements do not have any tendency to show how the terms "Bruxer" or "Bruxzir" were used by the public as of April 2011, the critical date for determining genericness, but refer to conduct in November 2011, March 2012, and May 2012. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).</p>
Exhibit	
A	<p>FRE 401, 402, 403, 802. The attached documents do not have any tendency to show how the terms "Bruxer" or "Bruxzir" were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).</p> <p>The witness fails to specify when he regarded "BruxZir" as meaning</p>

	<p>an “all zirconia crown, commonly used for bruxers,” and at most indicates a time reference as of the date of the prescription forms attached to his declaration as Exhibit A, dated November 2011, March 2012, and May 2012.</p> <p>The attached documents are also inadmissible hearsay. FRE 801, 802; <i>Orr v. Bank of America</i>, 285 F.3d 764, 778 (9th Cir. 2002).</p>
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H. Declaration of Dr. Raymond Brady

Paragraph	Objection
9	<p>FRE 401, 402, 403. The witness’s statements do not have any tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (See section I(B) (relevance), Objections [Dkt. 115]). The witness fails to specify when he regarded “Bruxir” as meaning a “full contour zirconia crown for bruxers,” and at most indicates a time reference as of the date of the prescription form attached to his declaration as Exhibit A, dated July 2012.</p>
10	<p>FRE 401, 402, 403. The witness’s statements do not have any tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness, but refer to conduct in July 2012. (See section I(B) (relevance), Objections [Dkt. 115]).</p>
Exhibit	
A	<p>FRE 401, 402, 403, 802. The attached document does not have any tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (See section I(B) (relevance), Objections [Dkt. 115]).</p>

	<p>The witness fails to specify when he regarded “Bruxir” as meaning a “full contour zirconia crown for bruxers,” and at most indicates a time reference as of the date of the prescription form attached to his declaration as Exhibit A, dated July 2012.</p> <p>The attached document is also inadmissible hearsay. FRE 801, 802; <i>Orr v. Bank of America</i>, 285 F.3d 764, 778 (9th Cir. 2002).</p>
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I. Declaration of Dr. Jonathan Campbell

Paragraph	Objection
10	<p>FRE 401, 402, 403. The witness’s statements do not have any tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (See section I(B) (relevance), Objections [Dkt. 115]).</p> <p>The witness fails to specify when he regarded “bruxzir” as meaning a “full contour zirconia crown for bruxers,” and at most indicates a time reference as of the date of the prescription form attached to his declaration as Exhibit A, dated October 2011.</p>
11	<p>FRE 401, 402, 403. The witness’s statements do not have any tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness, but refer to conduct in October 2011. (See section I(B) (relevance), Objections [Dkt. 115]).</p>
12	<p>FRE 401, 402, 403. The witness’s statements do not have any tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (See section I(B) (relevance), Objections [Dkt. 115]).</p> <p>The witness fails to specify when he began using the term “bruxzir”</p>

1	to “specify the type of crown [he] wanted for a patient and to
2	distinguish from other types of crowns such as PFMs and full cast
3	gold crowns.”
4	Exhibit
5	A FRE 401, 402, 403, 802. The attached document does not have any
6	tendency to show how the terms “Bruxer” or “Bruxzir” were used by
7	the public as of April 2011, the critical date for determining
8	genericness. (See section I(B) (relevance), Objections [Dkt. 115]).
9	The witness fails to specify when he regarded “bruxzir” as meaning a
10	“full contour zirconia crown for bruxers,” and at most indicates a
11	time reference as of the date of the prescription form attached to his
12	declaration as Exhibit A, dated October 2011.
13	The attached document is also inadmissible hearsay. FRE 801, 802;
14	<i>Orr v. Bank of America</i> , 285 F.3d 764, 778 (9th Cir. 2002).
15	
16	

J. Declaration of Dr. Michael Colleran

Paragraph	Objection
10	FRE 401, 402, 403. The witness’s statements do not have any tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (See section I(B) (relevance), Objections [Dkt. 115]). The witness fails to specify when he regarded “bruxzir” as meaning a “full contour zirconia crown for bruxers,” and at most indicates a time reference as of the date of the prescription form attached to his declaration as Exhibit A, dated August 2012.
11	FRE 401, 402, 403. The witness’s statements do not have any tendency to show how the terms “Bruxer” or “Bruxzir” were used by

1	the public as of April 2011, the critical date for determining
2	genericness, but refer to conduct in August 2012. (See section I(B)
3	(relevance), Objections [Dkt. 115]).
4	
5	12 FRE 401, 402, 403, 702. The witness's statements do not have any
6	tendency to show how the terms "Bruxer" or "Bruxzir" were used by
7	the public as of April 2011, the critical date for determining
8	genericness. (See section I(B) (relevance), Objections [Dkt. 115]).
9	The witness fails to specify when "he has seen the term 'bruxzir'
10	with various spellings," how he knows the use of the term "bruxir"
11	was used "to refer to an all zirconia crown," or how he knows "they
12	are all pronounced the same."
13	Exhibit
14	
15	A FRE 401, 402, 403, 802. The attached document does not have any
16	tendency to show how the terms "Bruxer" or "Bruxzir" were used by
17	the public as of April 2011, the critical date for determining
18	genericness. (See section I(B) (relevance), Objections [Dkt. 115]).
19	The witness fails to specify when he regarded "bruxzir" as meaning a
20	"full contour zirconia crown for bruxers," and at most indicates a
21	time reference as of the date of the prescription form attached to his
22	declaration as Exhibit A, dated August 2012.
23	The attached document is also inadmissible hearsay. FRE 801, 802;
24	<i>Orr v. Bank of America</i> , 285 F.3d 764, 778 (9th Cir. 2002).

K. Declaration of Dr. Joseph Jacquinot

Paragraph	Objection
9	FRE 401, 402, 403. The witness's statements do not have any tendency to show how the terms "Bruxer" or "Bruxzir" were used by

1	the public as of April 2011, the critical date for determining genericness. (See section I(B) (relevance), Objections [Dkt. 115]).
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10	FRE 401, 402, 403. The witness's statements do not have any tendency to show how the terms "Bruxer" or "Bruxzir" were used by the public as of April 2011, the critical date for determining genericness, but refer to conduct in October 2011. (See section I(B) (relevance), Objections [Dkt. 115]).
11	FRE 401, 402, 403, 702. The witness's statements do not have any tendency to show how the terms "Bruxer" or "Bruxzir" were used by the public as of April 2011, the critical date for determining genericness. (See section I(B) (relevance), Objections [Dkt. 115]). The witness fails to specify when he began to use "'brux-zir' to specify [an all zirconia crown]" or when or how he has "heard and pronounced 'bruxzir' the same way as 'bruxer.'"
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20	Exhibit
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	A FRE 401, 402, 403, 802. The attached documents do not have any tendency to show how the terms "Bruxer" or "Bruxzir" were used by the public as of April 2011, the critical date for determining genericness. (See section I(B) (relevance), Objections [Dkt. 115]). The witness fails to specify when he regarded "brux-zir" as meaning an "all zirconia crown which is often used for bruxers," and at most indicates a time reference as of the date of the prescription forms attached to his declaration as Exhibit A, dated October 2011.

1	The attached documents are also inadmissible hearsay. FRE 801,
2	802; <i>Orr v. Bank of America</i> , 285 F.3d 764, 778 (9th Cir. 2002).
3	

4 L. Declaration of Dr. Dennis Murphy

5 Paragraph	6 Objection
7 9	8 FRE 401, 402, 403. The witness's statements do not have any 9 tendency to show how the terms "Bruxer" or "Bruxzir" were used by 10 the public as of April 2011, the critical date for determining 11 genericness. (See section I(B) (relevance), Objections [Dkt. 115]). 12 The witness fails to specify when he regarded "bruxzir" and "bruxir" 13 as meaning an "all zirconia crown which is often used for bruxers," 14 and at most indicates a time reference as of the date of the 15 prescription forms attached to his declaration as Exhibit A, dated 16 November 2011 and May 2012.
17 10	18 FRE 401, 402, 403. The witness's statements do not have any 19 tendency to show how the terms "Bruxer" or "Bruxzir" were used by 20 the public as of April 2011, the critical date for determining 21 genericness, but refer to conduct in November 2011 and May 2012. 22 (See section I(B) (relevance), Objections [Dkt. 115]).
23 11	24 FRE 401, 402, 403, 702. The witness's statements do not have any 25 tendency to show how the terms "Bruxer" or "Bruxzir" were used by 26 the public as of April 2011, the critical date for determining 27 genericness. (See section I(B) (relevance), Objections [Dkt. 115]). 28 The witness fails to specify when he has seen "advertisements for all zirconia crowns that use the term "bruxzir," or a similar spelling, to identify [an all zirconia] crown." At most, the witness refers to his understanding as of November 2011 and May 2012 "when [he]

1	submitted the orders attached in Exhibit A.”
2	Exhibit
3	A FRE 401, 402, 403, 802. The attached documents do not have any 4 tendency to show how the terms “Bruxer” or “Bruxzir” were used by 5 the public as of April 2011, the critical date for determining 6 genericness. (See section I(B) (relevance), Objections [Dkt. 115]). 7 The witness fails to specify when he regarded “bruxzir” and “bruxir” 8 as meaning an “all zirconia crown which is often used for bruxers,” 9 and at most indicates a time reference as of the date of the 10 prescription forms attached to his declaration as Exhibit A, dated 11 November 2011 and May 2012. 12 The attached documents are also inadmissible hearsay. FRE 801, 13 802; <i>Orr v. Bank of America</i> , 285 F.3d 764, 778 (9th Cir. 2002).

M. Declaration of Dr. Terry Myers

Paragraph	Objection
17	8 FRE 401, 402, 403. The witness’s statements do not have any 18 tendency to show how the terms “Bruxer” or “Bruxzir” were used by 19 the public as of April 2011, the critical date for determining 20 genericness. (See section I(B) (relevance), Objections [Dkt. 115]). 21 The witness fails to specify when he regarded “bruxzir” as meaning a 22 “full contour zirconia crown for bruxers,” and at most indicates a 23 time reference as of the date of the prescription form attached to his 24 declaration as Exhibit B, dated November 2011.
25	9 FRE 401, 402, 403. The witness’s statements do not have any 26 tendency to show how the terms “Bruxer” or “Bruxzir” were used by 27 the public as of April 2011, the critical date for determining

1	genericness, but refer to conduct in November 2011. (See section
2	I(B) (relevance), Objections [Dkt. 115]).
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4	10 FRE 401, 402, 403, 702. The witness's statements do not have any
5	tendency to show how the terms "Bruxer" or "Bruxzir" were used by
6	the public as of April 2011, the critical date for determining
7	genericness. (See section I(B) (relevance), Objections [Dkt. 115]).
8	The witness fails to specify when he has seen advertisements for a
9	"bruxzir" crown or which dental laboratories were providing these
10	advertisements. The witness also fails to identify when he
11	understood the term "bruxzir" crown to mean "a full contour zirconia
12	crown."
13	Exhibit
14	
15	B FRE 401, 402, 403, 802. The attached document does not have any
16	tendency to show how the terms "Bruxer" or "Bruxzir" were used by
17	the public as of April 2011, the critical date for determining
18	genericness. (See section I(B) (relevance), Objections [Dkt. 115]).
19	The witness fails to specify when he regarded "bruxzir" as meaning a
20	"full contour zirconia crown for bruxers," and at most indicates a
21	time reference as of the date of the prescription form attached to his
22	declaration as Exhibit B, dated November 2011.
23	The attached document is also inadmissible hearsay. FRE 801, 802;
24	<i>Orr v. Bank of America</i> , 285 F.3d 764, 778 (9th Cir. 2002).

N. Declaration of Dr. Thomas Nussear

Paragraph	Objection
9	FRE 401, 402, 403. The witness's statements do not have any tendency to show how the terms "Bruxer" or "Bruxzir" were used by

1	the public as of April 2011, the critical date for determining genericness. (See section I(B) (relevance), Objections [Dkt. 115]).
2	The witness fails to specify when he regarded “bruxzir” as meaning a
3	“full contour zirconia crown for bruxers,” and at most indicates a
4	time reference as of the date of the prescription form attached to his
5	declaration as Exhibit A, dated May 2011.
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10	FRE 401, 402, 403. The witness’s statements do not have any tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness, but refer to conduct in May 2011. (See section I(B) (relevance), Objections [Dkt. 115]).
11	FRE 401, 402, 403, 702. The witness’s statements do not have any tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (See section I(B) (relevance), Objections [Dkt. 115]). The witness fails to specify when he “came to understand the terms ‘bruxzir’ and ‘bruxer’ to be synonymous” or that “each is pronounced the same” or that “both terms are commonly used to refer to all zirconia crowns which are commonly used for bruxers.”
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21	Exhibit
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A	FRE 401, 402, 403, 802. The attached document does not have any tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (See section I(B) (relevance), Objections [Dkt. 115]). The witness fails to specify when he regarded “bruxzir” as meaning a “full contour zirconia crown for bruxers,” and at most indicates a time reference as of the date of the prescription form attached to his

declaration as Exhibit A, dated May 2011.

The attached document is also inadmissible hearsay. FRE 801, 802; *Orr v. Bank of America*, 285 F.3d 764, 778 (9th Cir. 2002).

O. Declaration of Dr. Stan Richardson

Paragraph	Objection
10	FRE 401, 402, 403. The witness's statements do not have any tendency to show how the terms "Bruxer" or "Bruxzir" were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).
	The witness fails to specify when he regarded "bruxzir" and "bruxzer" as meaning an "all zirconia crown which is commonly used for bruxers," and at most indicates a time reference as of the date of the prescription forms attached to his declaration as Exhibit A, dated November 2011 and May 2012.
11	FRE 401, 402, 403. The witness's statements do not have any tendency to show how the terms "Bruxer" or "Bruxzir" were used by the public as of April 2011, the critical date for determining genericness, but refer to conduct in November 2011 and May 2012. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).
12	FRE 401, 402, 403. The witness's statements do not have any tendency to show how the terms "Bruxer" or "Bruxzir" were used by the public as of April 2011, the critical date for determining genericness, but again refer to conduct in November 2011 and May 2012. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).
Exhibit	
A	FRE 401, 402, 403, 802. The attached documents do not have any

tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (See section I(B) (relevance), Objections [Dkt. 115]). The witness fails to specify when he regarded “bruxzir” and “bruxzer” as meaning an “all zirconia crown which is commonly used for bruxers,” and at most indicates a time reference as of the date of the prescription forms attached to his declaration as Exhibit A, dated November 2011 and May 2012.

The attached documents are also inadmissible hearsay. FRE 801, 802; *Orr v. Bank of America*, 285 F.3d 764, 778 (9th Cir. 2002).

P. Declaration of Dr. Richard Scott

Paragraph	Objection
9	<p>FRE 401, 402, 403. The witness's statements do not have any tendency to show how the terms "Bruxer" or "Bruxzir" were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).</p> <p>The witness fails to specify when he regarded "bruxir" as meaning a "full contour zirconia crown for bruxers," and at most indicates a time reference as of the date of the prescription form attached to his declaration as Exhibit A, dated August 2012.</p>
10	<p>FRE 401, 402, 403. The witness's statements do not have any tendency to show how the terms "Bruxer" or "Bruxzir" were used by the public as of April 2011, the critical date for determining genericness, but refer to conduct in August 2012. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).</p>
11	<p>FRE 401, 402, 403, 702. The witness's statements do not have any</p>

1	tendency to show how the terms “Bruxer” or “Bruxzir” were used by 2 the public as of April 2011, the critical date for determining 3 genericness. (See section I(B) (relevance), Objections [Dkt. 115]). 4 The witness fails to specify when he came to the understanding that 5 “bruxer” crown, “bruxzir” crown, and “bruxir” crown all carry the 6 same meaning and that they are pronounced the same.
7	Exhibit
8	A FRE 401, 402, 403, 802. The attached document does not have any 9 tendency to show how the terms “Bruxer” or “Bruxzir” were used by 10 the public as of April 2011, the critical date for determining 11 genericness. (See section I(B) (relevance), Objections [Dkt. 115]). 12 The witness fails to specify when he regarded “bruxir” as meaning a 13 “full contour zirconia crown for bruxers,” and at most indicates a 14 time reference as of the date of the prescription form attached to his 15 declaration as Exhibit A, dated August 2012. 16 The attached document is also inadmissible hearsay. FRE 801, 802; 17 <i>Orr v. Bank of America</i> , 285 F.3d 764, 778 (9th Cir. 2002).

19 **Q. Declaration of Dr. Scott Stephens**

20 Paragraph	Objection
21 10	FRE 401, 402, 403. The witness’s statements do not have any 22 tendency to show how the terms “Bruxer” or “Bruxzir” were used by 23 the public as of April 2011, the critical date for determining 24 genericness. (See section I(B) (relevance), Objections [Dkt. 115]). 25 The witness fails to specify when he regarded “brux-zir” as meaning 26 a “full contour zirconia crown for bruxers,” and at most indicates a 27 time reference as of the date of the prescription form attached to his

1	declaration as Exhibit A, dated October 2011.
2	11 FRE 401, 402, 403. The witness's statements do not have any 3 tendency to show how the terms "Bruxer" or "Bruxzir" were used by 4 the public as of April 2011, the critical date for determining 5 genericness, but refer to conduct in October 2011. (See section I(B) 6 (relevance), Objections [Dkt. 115]).
7	12 FRE 401, 402, 403, 702. The witness's statements do not have any 8 tendency to show how the terms "Bruxer" or "Bruxzir" were used by 9 the public as of April 2011, the critical date for determining 10 genericness. (See section I(B) (relevance), Objections [Dkt. 115]). 11 The witness fails to specify when he understood "bruxzir" as a 12 reference to a crown used for bruxism patients made of zirconia. The 13 witness also does not indicate when or how he knows that when he 14 hears the term "bruxzir" pronounced, it is the same as "bruxer."
15	Exhibit
16	A FRE 401, 402, 403, 802. The attached document does not have any 17 tendency to show how the terms "Bruxer" or "Bruxzir" were used by 18 the public as of April 2011, the critical date for determining 19 genericness. (See section I(B) (relevance), Objections [Dkt. 115]). 20 The witness fails to specify when he regarded "brux-zir" as meaning 21 a "full contour zirconia crown for bruxers," and at most indicates a 22 time reference as of the date of the prescription form attached to his 23 declaration as Exhibit A, dated October 2011. 24 The attached document is also inadmissible hearsay. FRE 801, 802; 25 <i>Orr v. Bank of America</i> , 285 F.3d 764, 778 (9th Cir. 2002). 26 27 28

R. Declaration of Dr. Daniel Sweet

Paragraph	Objection
8	FRE 401, 402, 403. The witness's statements do not have any tendency to show how the terms "Bruxer" or "Bruxzir" were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]). The witness fails to specify when he regarded "brux-zir" as meaning a "full contour zirconia crown for bruxers," and at most indicates a time reference as of the date of the prescription form attached to his declaration as Exhibit A, dated August 2012.
9	FRE 401, 402, 403. The witness's statements do not have any tendency to show how the terms "Bruxer" or "Bruxzir" were used by the public as of April 2011, the critical date for determining genericness, but refer to conduct in August 2012. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).
10	FRE 401, 402, 403, 702. The witness's statements do not have any tendency to show how the terms "Bruxer" or "Bruxzir" were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]). The witness fails to specify when he understood "bruxzir" as a reference to a crown used for bruxism patients made of zirconia. The witness also does not indicate when or how he knows that when he hears the term "bruxzir" pronounced, it is the same as "bruxer."
Exhibit	
A	FRE 401, 402, 403, 802. The attached document does not have any tendency to show how the terms "Bruxer" or "Bruxzir" were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).

The witness fails to specify when he regarded “brux-zir” as meaning a “full contour zirconia crown for bruxers,” and at most indicates a time reference as of the date of the prescription form attached to his declaration as Exhibit A, dated August 2012.

The attached document is also inadmissible hearsay. FRE 801, 802; *Orr v. Bank of America*, 285 F.3d 764, 778 (9th Cir. 2002).

S. Declaration of Dr. Gary P. Tobin

Paragraph	Objection
8	FRE 401, 402, 403. The witness's statements do not have any tendency to show how the terms "Bruxer" or "Bruxzir" were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).
	The witness fails to specify when he regarded "brux-zir" as meaning a "full contour zirconia crown for bruxers," and at most indicates a time reference as of the date of the prescription form attached to his declaration as Exhibit A, dated October 2012.
9	FRE 401, 402, 403. The witness's statements do not have any tendency to show how the terms "Bruxer" or "Bruxzir" were used by the public as of April 2011, the critical date for determining genericness, but refer to conduct in October 2012. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).
10	FRE 401, 402, 403, 702. The witness's statements do not have any tendency to show how the terms "Bruxer" or "Bruxzir" were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]). The witness fails to specify when he understood "bruxzir" as a

1	reference to a crown used for bruxism patients made of zirconia. The witness also does not indicate when or how he knows that when he hears the term “bruxzir” pronounced, it is the same as “bruxer.”
2	11 FRE 401, 402, 403, 702. The witness’s statements do not have any tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (See section I(B) (relevance), Objections [Dkt. 115]). The witness fails to specify when he understood “bruxzir” as a reference to a crown used for bruxism patients made of zirconia. The witness also does not indicate when or how he knows that when he hears the term “bruxzir” pronounced, it is the same as “bruxer.”
3	Exhibit
4	A FRE 401, 402, 403, 802. The attached document does not have any tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (See section I(B) (relevance), Objections [Dkt. 115]). The witness fails to specify when he regarded “brux-zir” as meaning a “full contour zirconia crown for bruxers,” and at most indicates a time reference as of the date of the prescription form attached to his declaration as Exhibit A, dated October 2011. The attached document is also inadmissible hearsay. FRE 801, 802; <i>Orr v. Bank of America</i> , 285 F.3d 764, 778 (9th Cir. 2002).

T. Declaration of Robert Brandon

Paragraph	Objection
5	FRE 801, 802. The out of court statements of dentists are offered for the truth of the matter asserted and do not fall within an exception.

1	9	FRE 401, 402, 403. With respect to SGI 6 and 7 (Dkt. 126), the witness's statements do not have any tendency to show how that the orders for "KDZ Bruxer" ceased once the dentists learned that Keating was defending a lawsuit. The orders could have stopped for any number of reasons, including that the dentist intended to order Glidewell's BruxZir product.
7	10	FRE 401, 402, 403. With respect to SGI 6 and 7 (Dkt. 126), the witness's statements do not have any tendency to show how that the orders for "KDZ Bruxer" ceased once the dentists learned that Keating was defending a lawsuit. The orders could have stopped for any number of reasons, including that the dentist intended to order Glidewell's BruxZir product.

U. Declaration of Diane Mallos Donich

Paragraph	Objection	
16	3	FRE 401, 402, 403. The witness's statements do not have any tendency to show a correlation between the initiation of the lawsuit and the product sales; instead the witness's testimony tends to support correlation between the product sales and the advertising of the product, which Keating voluntarily decreased. Further objection for relevance on the basis that Keating could have decreased its advertising for any number of reasons.
23	4	FRE 401, 402, 403. The witness's statements do not have any tendency to show a correlation between the initiation of the lawsuit and the product sales; instead the witness's testimony tends to show a correlation between the product sales and the advertising of the product, which Keating voluntarily decreased. Exhibit A further

1	shows that the product sales did not stagnate and decline, on the
2	contrary, the sales in May 2012 and subsequent are equal to greater
3	than sales of any month prior to December 2011.
4	Exhibit
5	A
6	FRE 401, 402, 403. The attached document does not have any
7	tendency to support the witness's statements, as it does not contain
8	marketing and advertising figures. Further, Exhibit A further shows
9	that the product sales did not stagnate and decline, on the contrary,
10	the sales in May 2012 and subsequent are equal to greater than sales
11	of any month prior to December 2011.

11 **V. Declaration of David Jankowski iso Keating's Oppositions to Glidewell's**
 12 **Motions for Summary Judgment (Dkt. No. 125)**

13 Exhibit	14 Objection
15 138	16 FRE 901. This exhibit has not been authenticated by any declaration, nor 17 has Keating cited any deposition testimony to authenticate it. It also is 18 not bates-stamped by either party.
19 153	20 This exhibit is a full deposition transcript, most of which Keating does 21 not cite in its papers. Glidewell has not reviewed the entire transcript to 22 determine what is admissible and what is not, nor is it obligated to. 23 Instead, Glidewell hereby reserves its right to raise objections to any 24 uncited portions of the transcript Keating may later rely on. Further 25 objection on the ground that the deposition transcript is not properly 26 authenticated. No signature page is attached and the copy of the 27 transcript is not a certified copy.
28 155	FRE 401, 402, 403. With respect to Keating's Response to SUF 14 (Dkt. 29 126), Keating proffers this exhibit as evidence contrary to the fact that 30 "The usages of the ® symbol in Exhibits 70-72 were inadvertent...."

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28
Exhibit	Objection
	<p>because there were additional examples from Glidewell's website. This evidence is not probative that the instances in Exhibits 70-72 were not inadvertent. Further, this exhibit does not support Keating's assertion that "There were multiple email blasts which Glidewell sent to over 100,000 dentists" as this exhibit is a website printout. With respect to Keating's Response to SUF 15 (Dkt. 126), Keating proffers this exhibit as evidence that "two instances identified on Glidewell's website were corrected within one day of my becoming aware of them" is disputed because more than two instances were identified on Glidewell's website. However, the two instances referenced were those of Exhibits 70-72, not of Exhibits 155-158. Thus, Exhibits 155-158 are not probative of whether the instances within Exhibits 70-72 were corrected within a day of becoming aware of them. Further, Exhibits 155-158 all appear to have been printed on the same day, October 22, 2012, and are not probative of whether the website was corrected within one day of October 22, 2012. With respect to Keating's Response to SUF 19 (Dkt. 126), this exhibit is a single website page, and is not probative of greater misuse of ® beyond a handful of inadvertent uses. With respect to SGI 1 (Dkt. 126), this exhibit is one of three examples given; this evidence does not establish that Glidewell "widely used" the ® symbol.</p>
156	<p>FRE 401, 402, 403. With respect to Keating's Response to SUF 14 (Dkt. 126), Keating proffers this exhibit as evidence contrary to the fact that "The usages of the ® symbol in Exhibits 70-72 were inadvertent...." because there were additional examples from Glidewell's website. This evidence is not probative that the instances in Exhibits 70-72 were not inadvertent. Further, this exhibit does not support Keating's assertion</p>

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28
Exhibit	Objection
	<p>that “There were multiple email blasts which Glidewell sent to over 100,000 dentists” as this exhibit is a website printout. With respect to Keating’s Response to SUF 15 (Dkt. 126), Keating proffers this exhibit as evidence that “two instances identified on Glidewell’s website were corrected within one day of my becoming aware of them” is disputed because more than two instances were identified on Glidewell’s website. However, the two instances referenced were those of Exhibits 70-72, not of Exhibits 155-158. Thus, Exhibits 155-158 are not probative of whether the instances within Exhibits 70-72 were corrected within a day of becoming aware of them. Further, Exhibits 155-158 all appear to have been printed on the same day, October 22, 2012, and are not probative of whether the website was corrected within one day of October 22, 2012. With respect to Keating’s Response to SUF 19 (Dkt. 126), this exhibit is a single website page, and is not probative of greater misuse of ® beyond a handful of inadvertent uses. With respect to SGI 1 (Dkt. 126), this exhibit is one of three examples given; this evidence does not establish that Glidewell “widely used” the ® symbol.</p>
157	<p>FRE 401, 402, 403. With respect to Keating’s Response to SUF 14 (Dkt. 126), Keating proffers this exhibit as evidence contrary to the fact that “The usages of the ® symbol in Exhibits 70-72 were inadvert....” because there were additional examples from Glidewell’s website. This evidence is not probative that the instances in Exhibits 70-72 were not inadvert. Further, this exhibit does not support Keating’s assertion that “There were multiple email blasts which Glidewell sent to over 100,000 dentists” as this exhibit is a website printout. With respect to Keating’s Response to SUF 15 (Dkt. 126), Keating proffers this exhibit as</p>

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28
Exhibit	Objection
	<p>evidence that “two instances identified on Glidewell’s website were corrected within one day of my becoming aware of them” is disputed because more than two instances were identified on Glidewell’s website. However, the two instances referenced were those of Exhibits 70-72, not of Exhibits 155-158. Thus, Exhibits 155-158 are not probative of whether the instances within Exhibits 70-72 were corrected within a day of becoming aware of them. Further, Exhibits 155-158 all appear to have been printed on the same day, October 22, 2012, and are not probative of whether the website was corrected within one day of October 22, 2012. With respect to Keating’s Response to SUF 19 (Dkt. 126), this exhibit is a single website page, and is not probative of greater misuse of ® beyond a handful of inadvertent uses. With respect to SGI 1 (Dkt. 126), this exhibit is one of three examples given; this evidence does not establish that Glidewell “widely used” the ® symbol.</p>
158	<p>FRE 401, 402, 403. With respect to Keating’s Response to SUF 14 (Dkt. 126), Keating proffers this exhibit as evidence contrary to the fact that “The usages of the ® symbol in Exhibits 70-72 were inadvertent....” because there were additional examples from Glidewell’s website. This evidence is not probative that the instances in Exhibits 70-72 were not inadvertent. Further, this exhibit does not support Keating’s assertion that “There were multiple email blasts which Glidewell sent to over 100,000 dentists” as this exhibit is a website printout. With respect to Keating’s Response to SUF 15 (Dkt. 126), Keating proffers this exhibit as evidence that “two instances identified on Glidewell’s website were corrected within one day of my becoming aware of them” is disputed because more than two instances were identified on Glidewell’s website.</p>

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	Exhibit Objection
	<p>However, the two instances referenced were those of Exhibits 70-72, not of Exhibits 155-158. Thus, Exhibits 155-158 are not probative of whether the instances within Exhibits 70-72 were corrected within a day of becoming aware of them. Further, Exhibits 155-158 all appear to have been printed on the same day, October 22, 2012, and are not probative of whether the website was corrected within one day of October 22, 2012.</p> <p>With respect to Keating's Response to SUF 19 (Dkt. 126), this exhibit is a single website page, and is not probative of greater misuse of ® beyond a handful of inadvertent uses. With respect to SGI 1 (Dkt. 126), this exhibit is one of three examples given; this evidence does not establish that Glidewell "widely used" the ® symbol.</p>

W. Declaration of Shaun Keating

Paragraph	Objection
11	<p>FRE 401, 402, 403. The witness's statements do not have any tendency to show the of the term "KDZ" and the term "Bruxer" in advertisements including the term "KDZ Bruxer," such that the relative prominence of the term "KDZ" and the term "Bruxer" can be established.</p>

Dated: December 3, 2012

SNELL & WILMER L.L.P.

By: s/Philip J. Graves

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James R. Glidewell Dental Ceramics, Inc. dba
Glidewell Laboratories

Glidewell Laboratories v. Keating Dental Arts, Inc.
United States District Court, Central, Case No. SACV11-01309-DOC (ANx)

CERTIFICATE OF SERVICE

I hereby certify that on December 3, 2012, I electronically filed the document described as **JAMES R. GLIDEWELL DENTAL CERAMICS, INC.'S STATEMENT OF OBJECTIONS TO EVIDENCE SUBMITTED IN SUPPORT OF KEATING'S MOTIONS FOR SUMMARY JUDGMENT** with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

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